

ORDINANCE NO. 10-72

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW A TEMPORARY WAIVER OF PLAT ON CONDITION THAT THE PROPERTY IS PLATTED WITHIN 18 MONTHS FROM THE EFFECTIVE DATE OF THIS ORDINANCE. **PROPERTY LOCATED AT ON THE EAST SIDE OF WEST 14 AVENUE, BETWEEN WEST 29 STREET AND WEST 31 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of November 10, 2010, recommended approval of this ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The below-described property is hereby granted a variance permit to allow a temporary waiver of plat on condition that the property is platted within 18 months from the effective date of this Ordinance. Property located on the east side of West 14 Avenue, between West 29 Street and West 31 Street, Hialeah, Miami-Dade County, Florida, zoned R-4 (Townhouses District), and legally described as follows:

ALL OF BLOCK 1, AND LOTS 1, 2, 3, 4, 14, 15, 16, 17, AND 18, IN BLOCK 2, OF PACIFICA ESTATES, A PLAT IN PROGRESS, TO BE RECORDED IN PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not

to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

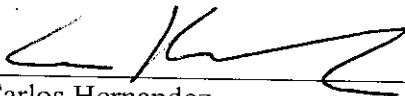
Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 14th day of December, 2010.



Carlos Hernandez
Council President

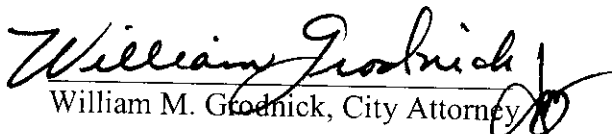
Attest: Approved on this ____ day of _____, 2010.

David Concepcion, Acting City Clerk

MAYOR'S SIGNATURE WITHHELD

Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

DECLARATION OF RESTRICTIVE COVENANTS

COVENANT COMMUNITY CONTRACT

This declaration of restrictive covenants is executed as of this 19th day of December, 2010, by Pacifica Estates, LLC, a Florida limited liability company ("Developer"), being the owner of the following described real property in Miami-Dade County, Florida:

See attached Exhibit "A".

We do hereby, accordingly, by these presents make, declare and impose upon the above-described land the following agreements, conditions, restrictions, limitations and easements that shall be and constitute covenants running with the land and shall be binding upon the undersigned, its successors and assigns, as well as people claiming under it, and each and all subsequent purchasers, their heirs, personal representatives, successors and assigns, of such property or any part, parcel, or portion thereof, to wit:

Part A – Definitions.

The following definitions shall be used when construing or interpreting this declaration of restrictive covenants. In the event of any ambiguity, or in construing or interpreting any word not defined herein, the definition given the word by the Florida Constitution, if any, the Florida Statutes, if any, Hialeah Code, if any, or common dictionary definition of the word shall be applied, in descending order of priority.

1. *Commercial vehicle* means any vehicle which displays, whether temporarily or permanently, any lettering, logo, or other markings which identify the vehicle as belonging to or used for any commercial purpose; and/or any vehicle on which is visible and is designed to carry cargo, supplies, merchandise, machinery, tools, equipment, racks, or other items of a commercial nature; and/or any van or truck which does not contain passenger seating to the rear of the driver's seat or which does not have rear side windows and which is used to transport any item, such as described above, for business or commercial purposes; and/or any vehicle manufactured and commonly used as a work or commercial vehicle for hire.
2. *Trailer* means any motorized or non-motorized vehicle, frame, container or structure designed to be towed or driven on roads and which is used to carry camping or living quarters; any wheeled structure, frame or platform used to carry or tow watercrafts of any kind; any platform or structure or rig used to carry and transport motor vehicles; or any non-motorized container or structure designed to be towed by or placed onto a motorized vehicle and used to carry or store equipment, materials or other items; any previously wheeled structure, frame, platform or container which has had its wheels removed or disabled.

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3. *Watercraft* means any boat, dinghy, raft, or other vessel or structure of any size, shape, material or configuration which is designed to float or travel on water and carry or transport one or more persons on water, whether or not motorized.
4. *Structure change or modification* means any change made to the original façade, elevation(s), number or location of windows, doors, walls or foundation; any alterations to walkways, embellishments, porte-cocheres, porches, beams, roof tiles, roof structure, decks, docks, or the size or configuration of any element of the existing building.

Part B – Covenants.

5. The property shall be developed substantially in accordance with that plan of development submitted with this declaration entitled, "Proposed 21 Unit Project for Pacifica Estates, LLC" as prepared by Alberto O. Gonzalez Architect, consisting of 1 sheet, a copy of which is attached hereto and labeled Exhibit "A".

6. *Perimeter Fence; Maintenance and Repair; Cost-Sharing.* The Developer shall install a perimeter fence with the characteristics defined in the common plan of development approved by the City of Hialeah. The appearance of the perimeter fence shall be uniform throughout. It is the obligation of each property owner to maintain, keep up and repair the fence so that it will remain sound, uniform in appearance, and aesthetically pleasing. The obligation to maintain shall include but not be limited to the repair of damage caused by vehicular impact, windstorm, fire, and any other natural or man-made casualty. Any costs associated with the maintenance or repair of the perimeter fence shall be paid for by the property owners whose property touches upon any part of the perimeter fence to be maintained or repaired proportionately to the linear feet of fence to be repaired on each owner's property. No owner may waive or otherwise avoid liability for their share of maintenance or repair costs by abandoning the use of the perimeter fence. All materials used in the repair of the fence shall be the same or substantially similar in order to maintain the fence's uniform appearance. No other fencing, additions or modifications to the perimeter fence as installed by the developer will be permitted unless the entire perimeter fence is replaced. No material of any kind shall be installed, affixed, or used on the perimeter fence to screen, shield or obstruct the view from the outside except for natural plants or landscaping.

7. *Side or interior fencing.* Interior fencing along the side property lines is permitted only if the fencing material used, design, color, and overall appearance is the same or substantially similar to the perimeter fence. Side or interior fencing shall be compatible, if not uniform, with the perimeter fence and shall be maintained so that it will remain in a sound and aesthetically pleasing condition. Costs associated with installation, maintenance, upkeep, and repair shall be the sole responsibility of the property owner on whose property the fence is installed. Side or interior fencing can include screening or panels for added privacy, so long as they are harmonious with the general design and appearance of the entire fencing.

8. *Backyards, Side yards, and Front yards.* No structure change, modification or addition of any kind shall be permitted, including but not limited to accessory buildings, utility sheds, storage sheds, carports or aluminum roofs, porches, gazebos, tiki huts, or cabanas. No variances shall be permitted for lot coverage or encroachments into the setbacks beyond the areas approved. A retractable awning may be installed in the backyard only to provide additional covered area as long as it does not project more than 10 feet.

9. *Landscaping:* All plantings in each lot shall be kept trimmed and free of weeds, dead plant material, garbage and other debris that detracts from the appearance of the lot. All sprinkler and irrigation systems are to be maintained in good working order at all times and shall be utilized to provide irrigation to the landscape regularly and as often as required to maintain the appearance and health of grass and plants. It is the obligation of every property owner to cut, trim, prune, or replace any grassed area, hedge, tree, or planting so as to maintain the general appearance of the landscaping in a neat and attractive manner. There shall be no expansion of any paved driveways, sidewalks, curbing, or approaches so as to reduce the size of any green or grassed area or swale, or eliminate any existing landscaping.

10. *Commercial Vehicles, Trucks, Trailers, Portable on Demand or other Temporary Storage Sheds, Campers, Boats, Watercraft, and other Recreational Vehicles:* In order to maintain the high standards of the subdivision with respect to residential appearances, no commercial trucks or other commercial vehicles, vans, campers, boats, jet skis, or other watercraft, recreational vehicles, motor homes, portable on demand or other temporary storage sheds, house trailers, boat trailers and trailers of any other kind, whether operable or inoperable, shall be permitted to be parked or to be stored at any place on any lot, common area or right of way within the subdivision. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles during the performance of commercial services. Marked and unmarked law enforcement "take home" vehicles may be permitted to be parked in driveways or garages.

11. *Enforcement of Uniform Traffic Control Laws including Parking restrictions:* The City of Hialeah is hereby granted traffic control jurisdiction over the private driveways within Pacifica Estates so that the City may enforce the State uniform traffic control laws. City of Hialeah Police officers are authorized to enter upon the private driveways within Pacifica Estates for the purpose of exercising this jurisdiction. This grant of jurisdiction shall not be construed to require any minimum level of traffic or create any priority for traffic enforcement on the private driveways within Pacifica Estates as compared to public roadways or other private driveways.

All traffic control signs within Pacifica Estates shall be uniform traffic control signs and maintained by the homeowners. The City shall have the right at any time to require additional traffic control signs or other traffic control apparatus as the City may deem necessary for the enforcement of traffic laws on the private driveways.

In addition to parking prohibitions or restrictions provided in the State uniform traffic laws, parking on sidewalks, swale areas, or other green areas is prohibited. Parking on the ingress and egress easements or roadways is prohibited. Parking is restricted to the paved surfaces of front private driveways serving each property and offsite parking.

12. *Air Conditioning Units*: Air conditioning for any buildings shall be provided by central air conditioning units which shall be placed no further forward than the front line of the building line and shall be screened, landscaped, and/or covered so as to keep it from being visible from the front or side streets adjoining the lot. No window or wall air conditioning units shall be permitted in any addition or new improvements located within the subdivision.

13. Any repairs and/or maintenance of any area of common use, including but not limited to landscaping and/or fencing (as provided in paragraph 6) shall be the responsibility of the homeowner or homeowners on whose property the area needing repair or maintenance touches upon. For purposes of this section, the Final plat of the property shall govern as it relates to the property lines and to whom the repair and/or maintenance shall correspond. If any of the aforementioned repairs and/or maintenance is for the benefit of the Pacifica Estates community in general, such as sidewalks, lighting of the ingress/egress easements, roadways, traffic control signs, and drainage, such costs shall be apportioned equally among the 21 homeowners of the Pacifica Estates community. It shall be the responsibility of the owner making the repair to collect from the pro-rate amounts from the community.

14. *Drainage*: No changes in elevations or compositions of the land shall be made which will cause surface water to flow onto adjoining property.

Part C – General Provisions

15. *Term*: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of a two-thirds (2/3) majority of the lots in the subdivision, has been recorded, agreeing to change said covenants in whole or in part.

16. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida.

17. *Enforcement of Covenants and Restrictions; Creation of Lien and Personal Obligation for fines assessed as a result of a violation of any covenant or restriction*: These covenants and restrictions may be enforced by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or

restriction, either to restrain violation or to recover damages. The Developer, its successors and assigns, and any property owner have the right to enforce the covenants and restrictions.

Furthermore, the Developer hereby assigns the right to enforce these covenants and restrictions to the City of Hialeah. This assignment shall survive any property interests the Developer may have.

The City of Hialeah may enforce these covenants and restrictions by a proceeding at law or equity, or by any other lawful means of enforcement available to the City of Hialeah under its Code of Ordinances, including the right to issue fines, citations, or record liens against the property. Any fine, citation, or lien against a property owner found to be in violation shall be imposed according to the City of Hialeah's Code Enforcement procedure in effect at the time, including the amount in fines assessed, notice and hearing requirements, and appeals procedure. Any fine and associated administrative costs or expenses, imposed as a result of a code enforcement proceeding by the City of Hialeah shall be a personal obligation of the person who was the owner of the property at the time when the violation occurred. Any fine and associated administrative costs or expenses, imposed as a result of a code enforcement proceeding by the City of Hialeah shall also be a charge on the land and shall be a continuing lien upon the property on which the violation occurred. Any lien created pursuant to this section, with the exception of lot clearing liens, shall be subordinate to the lien of any mortgage encumbering any lot to any institutional lender now or hereafter placed upon the property subject to the lien.

Failure by any party having a right to enforce these covenants and restrictions to enforce these covenants and restrictions in any one instance shall not operate as a waiver of the right to enforce any other or future instance of violation.

18. *Severability*: Invalidation of any of these covenants by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect.

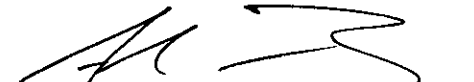
IN WITNESS WHEREOF, Pacifica Estates, LLC, as the Developer has caused this instrument to be executed as of the 14th day of December, 2010.

Signed, sealed, and delivered
in the presence of:
(2 witnesses)

Pacifica Estates, LLC



Typed/printed name: Camilo C. Adams



Alexander Ruiz, Managing Member

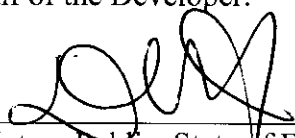


Typed/printed name: Danielle K. Munoz

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 14th day of December, 2010 by Alexander Ruiz, as Managing Member of Pacifica Estates, LLC, who is personally known to me or who provided a Florida Drivers License identifying him to be the same, in his authorized capacity on behalf of the Developer.

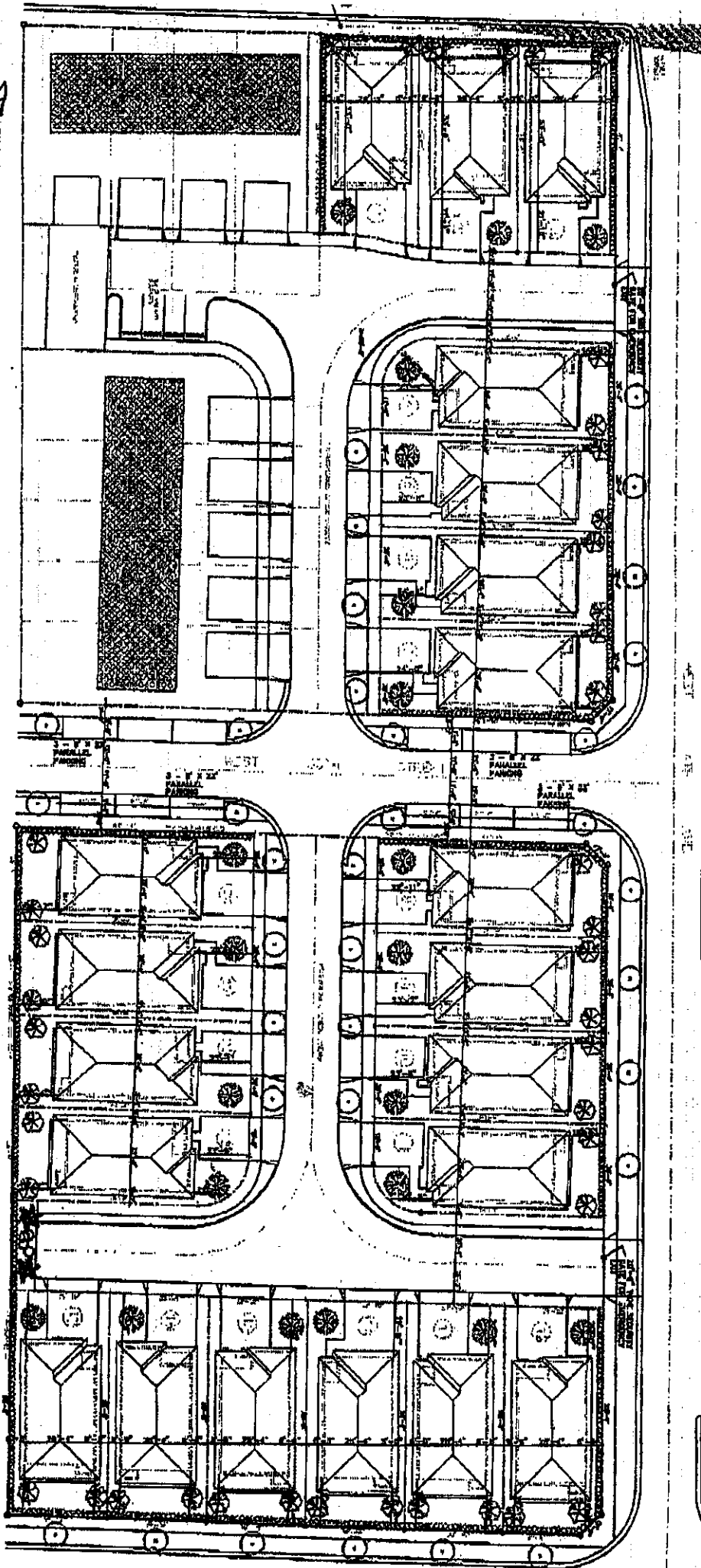


Notary Public, State of Florida

My Commission Expires



Exhibit A



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